

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

JUANA HERNANDEZ, AS )	
ADMINISTRATRIX OF THE )	
ESTATE OF DANNY NICACIO )	
and ARMANDO MAISONET, )	
)	
Plaintiffs, )	
)	
v. )	CIVIL ACTION NO. 05-40141-FDS
)	
SCOTTSDALE INSURANCE )	
COMPANY and UTICA )	
MUTUAL INSURANCE )	
COMPANY, )	
)	
<u>Defendants.</u> )	

**DEFENDANTS' SECOND SUPPLEMENT TO THEIR REPLY IN SUPPORT OF THEIR  
JOINT MOTION TO DISMISS PURSUANT TO FED. R. CIV. P.  
12 (b)(6), OR TO STAY ACTION IF NOT DISMISSED IN ITS ENTIRETY**

Pursuant to the Court's Order dated March 6, 2006 on *Defendants' Motion for Leave to File Supplement to Their Reply in Support of Their Joint Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6), or to Stay Action if Not Dismissed in its Entirety*, the Defendants, Scottsdale Insurance Company ("Scottsdale") and Utica Mutual Insurance Company ("Utica"), hereby file their second supplement to their *Reply in Support of Their Joint Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6), or to Stay Action If Not Dismissed In Its Entirety* ("Reply").

In support of their supplement, the Defendants state as follows:

In Section VI of the Defendants' Reply, the Defendants address the fact that Scottsdale and Utica's insured, Saielo, Inc. has filed a motion to dismiss in the Underlying Actions based on the passage of the Protection of Lawful Commerce In Arms Act ("Act"), enacted on October 26, 2005. In Opposition to that Motion to Dismiss, the Plaintiffs have argued that the Act is

unconstitutional. In response to Plaintiffs arguments regarding the constitutionality of the Act, the United States of America has intervened in the Underlying Acts. A copy of the cover letter submitted with the United States' papers is attached hereto.<sup>1</sup>

WHEREFORE, Defendants hereby respectfully request that the Court consider this supplement to their Reply.

Respectfully submitted,

**Scottsdale Insurance Company,  
By Its Attorneys,**

/s/ Caryn L. Daum  
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**Utica Mutual Insurance Company,  
By Its Attorney,**

/s/ James T. Scamby  
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Dated: April 4, 2006

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<sup>1</sup> The Defendants have not produced a complete copy of the United States' papers due to their length. In the event that this Court wants to see a complete copy of the papers submitted by the United States' attorneys, Defendants will forward them on to this Court.

**CERTIFICATE OF SERVICE**

I, Caryn L. Daum, hereby certify that a true and accurate copy of the foregoing document was served by first-class mail, postage prepaid, on this 4<sup>th</sup> day of April, 2006, upon:

Héctor E. Piñeiro, Esq.  
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/s/ Caryn L. Daum

Caryn L. Daum



**U.S. Department of Justice**  
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Federal Programs Branch  
20 Massachusetts Ave., NW  
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February 27, 2006

Via Federal Express Overnight Delivery

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Re: United States Government papers in Hernandez, et al. v. Kahr Arms, Inc., et al.,  
No. CV WOCV2002-01747 Session C (Mass Sup. Ct.) & Maisonet, et al. v. Kahr  
Arms, Inc., No. CV WOCCV2002-2025 Session C (Mass. Sup. Ct.)

Dear Counsel:

Enclosed please find the United States' papers in connection with the above-referenced cases in the Massachusetts Superior Court in Worcester. These documents are identical to those I forwarded earlier this month. Having heard no objection from Mr. Melzer's client, I have now filed all of the documents, except for the United States' brief defending the Protection of Lawful Commerce in Arms Act. The certificate of filing and service sets this out. The only additional document is the declaration setting for my attempt comply with Rule 9A, which is required under Rule 9A(b)(2).

It is my understanding that all of the substantive briefs in this case will be simultaneously filed. If whoever is responsible for such filing could advise me of the procedure for forwarding those briefs or the time when I should forward them to the Court so that all papers are filed together, I would appreciate it.

Please do not hesitate to contact me with any questions regarding the above.

Cordially,

  
Alexander K. Haas  
Trial Attorney

Enclosures